**Marin Grand Prix Motors Corporation *and* International Association of Machinists and Aerospace Workers, District Lodge No. 190 and Local Lodge No. 1305, AFL-CIO.** Case 20-CA-15954

May 28, 1982

## DECISION AND ORDER

BY CHAIRMAN VAN DE WATER AND MEMBERS FANNING AND HUNTER

On March 25, 1982, Administrative Law Judge Jay R. Pollack issued the attached Decision in this proceeding. Thereafter, the General Counsel and the Charging Party filed exceptions.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and has decided to affirm the rulings, findings, and conclusions of the Administrative Law Judge and to adopt his recommended Order, as modified herein.[1]

## ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge, as modified and set forth in full below, and hereby orders that the Respondent, Marin Grand Prix Motors Corporation, San Rafael, California, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discharging or otherwise discriminating against employees for supporting or engaging in activities on behalf of International Association of Machinists and Aerospace Workers, District Lodge No. 190 and Local Lodge No. 1305, AFL-CIO, or any other labor organization.

(b) Promising employees increased benefits if they voted against the Union; promising benefits to employees who voted against the Union; threatening to discharge employees who voted for the Union; threatening employees with reduced benefits because of their union activities; creating the impression that its employees' union activities were under surveillance; encouraging employees to demand that the Board election be annulled; and telling employees that it would never negotiate a contract with the Union.

(c) Unilaterally changing health and tool insurance coverage, or instituting a "comeback" policy without first giving the Union an opportunity to bargain over the matter.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act:

(a) Offer Horatio Wilmott immediate and full reinstatement to his former position or, if that position no longer exists, to a substantially equivalent position, without prejudice to his seniority and other rights and privileges previously enjoyed, and make him whole in the manner described in the section of the Administrative Law Judge's Decision entitled "The Remedy" for any losses suffered by reason of his discriminatory discharge on December 6, 1980.

(b) Expunge from its files any reference to the discriminatory discharge of Horatio Wilmott on December 6, 1980, and notify him, in writing, that this has been done and that evidence of this discharge will not be used as a basis for future personnel actions against him.

(c) Rescind the unilateral changes it made in its health and tool insurance coverage and in its comeback policy, and restore the insurance coverage that was in effect prior to September 1, 1980.

(d) Make whole its employees for any monetary losses they may have suffered as a result of the unilateral changes in health and tool insurance coverage, with interest, in the same manner as that specified in the section of the Administrative Law Judge's Decision entitled "The Remedy."

(e) Post at its San Rafael, California, facility copies of the attached notice marked "Appendix."[2] Copies of said notice, on forms provided by the Regional Director for Region 20, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt

[1] We shall modify the Administrative Law Judge's recommended Order so as to require Respondent to expunge from its files any reference to the discriminatory discharge of Horatio Wilmott on December 6, 1980, and to notify him, in writing, that this has been done and that evidence of this unlawful discharge will not be used against him. See *Sterling Sugars, Inc.*, 261 NLRB 472 (1982).

We also shall modify the recommended Order so as to require Respondent to rescind the unilateral changes in health and tool insurance coverage and in its "comeback" policy, to restore the insurance coverage that was in effect as of September 1, 1980, and to make the employees whole for any losses due to its unilateral changes in insurance coverage.

The Union requests that we order Respondent to reimburse it for attorney's fees under *Tiidee Products, Inc.*, 194 NLRB 1234 (1972). However, we deny the Union's request since we find that such an extraordinary remedy is not warranted in the circumstances of this case.

[2] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that said notices are not altered, defaced, or covered by any other material.

(f) Copies of the above-mentioned notice shall also be mailed to all automobile mechanics and apprentices employed by Respondent during the period from July 1980 to February 1981, at their homes.

(g) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(h) Notify the Regional Director for Region 20, in writing, within 20 days from the date of this Order, what steps the Respondent has taken to comply herewith.

## APPENDIX

### NOTICE TO EMPLOYEES
### POSTED BY ORDER OF THE
### NATIONAL LABOR RELATIONS BOARD
### An Agency of the United States Government

The National Labor Relations Act gives employees the following rights:

To engage in self-organization

To form, join, or assist any union

To bargain collectively through representatives of their own choice

To engage in activities together for the purpose of collective bargaining or other mutual aid or protection

To refrain from the exercise of any or all such activities.

WE WILL NOT discharge or otherwise discriminate against employees for supporting or engaging in activities on behalf of International Association of Machinists and Aerospace Workers, District Lodge No. 190 and Local Lodge No. 1305, AFL-CIO, or any other labor organization.

WE WILL NOT promise employees increased benefits if they voted against the Union; promise benefits to employees who voted against the Union; threaten to discharge employees who voted for the Union; threaten employees with reduced benefits because of their union activities; create the impression that employees' union activities were under surveillance; encourage employees to demand that the Board election be annulled; and tell employees that we would never negotiate a contract with the Union.

WE WILL NOT unilaterally change health and tool insurance coverage, or institute a "comeback" policy, without first giving the Union an opportunity to bargain over such matters.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL offer Horatio Wilmott full and immediate reinstatement to his former position or, if that position no longer exists, to a substantially equivalent position, without prejudice to his seniority or other rights and privileges previously enjoyed, and WE WILL make hm whole for any losses he may have suffered because of the discrimination against him, plus interest.

WE WILL expunge from our files any reference to the discriminatory discharge of Horatio Wilmott on December 6, 1980, and WE WILL notify him in writing that this has been done and that evidence of this discharge will not be used as a basis for future personnel actions against him.

WE WILL rescind the unilateral changes we made in our health and tool insurance coverage and in our comeback policy, and WE WILL restore the insurance coverage that was in effect prior to September 1, 1980.

WE WILL make whole our employees for any losses they may have suffered as a result of our unilateral changes in health and tool insurance coverage, plus interest.

MARIN GRAND PRIX MOTORS CORPORATION

## DECISION

### STATEMENT OF THE CASE

JAY R. POLLACK, Administrative Law Judge: I heard this case in San Francisco, California, on February 16, 1982. On March 31, 1981, the Acting Regional Director for Region 20 of the National Labor Relations Board issued a complaint and notice of hearing, based on an unfair labor practice charge filed by International Association of Machinists and Aerospace Workers, District Lodge No. 190 and Local Lodge No. 1305, AFL-CIO, herein called the Union, on January 15, 1981. The complaint alleges in substance that Marin Grand Prix Motors Corporation, herein called Respondent, engaged in certain violations of Section 8(a)(1) and (3) of the National

Labor Relations Act, as amended, 29 U.S.C. § 151, *et seq.*

The parties were given the opportunity during the hearing to introduce relevant evidence, to examine and cross-examine witnesses, to argue orally, and to file briefs. Respondent was not represented by counsel and, with the exception of a brief cross-examination of one of the witnesses presented by the General Counsel, Respondent did not participate in the hearing.

Upon the entire record made in this proceeding, including my observation of the demeanor of the witnesses, I make the following:

## FINDINGS OF FACT AND CONCLUSIONS

### I. JURISDICTION

At the time material herein, Respondent, a California corporation, maintained its principal place of business in San Rafael, California, where it was engaged in the retail sale and service of automobiles. During the 12 months preceding issuance of the complaint, Respondent received gross revenues in excess of $500,000. During the same time period, Respondent purchased and received goods valued in excess of $50,000 from locations directly outside California. Accordingly, I find that, at the time material herein, Respondent was an employer engaged in commerce and in a business affecting commerce within the meaning of Section 2(2), (6), and (7) of the Act.

### II. THE LABOR ORGANIZATION INVOLVED

The Union exists for the purpose, *inter alia*, of representing its employee-members in dealing with employers for the purpose of collective bargaining. The Union was certified as the exclusive collective-bargaining representative of Respondent's auto mechanics and apprentices in Case 20-RD-1602 on September 26, 1980. Accordingly, I find that the Union is a labor organization within the meaning of Section 2(5) of the Act.

### III. THE ALLEGED UNFAIR LABOR PRACTICES

#### A. *Background*

As discussed above, Respondent operated an automobile dealership in San Rafael, California.[1] Respondent purchased the dealership from Brown Motors in approximately September 1979. At the time of Respondent's takeover of the auto dealership, the auto mechanics were represented by the Union. On April 7, 1980, a petition was filed in Case 20-RD-1602 by Leonard Williams, an employee, seeking to decertify the Union as the exclusive collective-bargaining representative of Respondent's auto mechanics. On July 24, 1980, an election was held under the auspices of the Regional Director in the appropriate collective-bargaining unit.[2] The tally of ballots revealed that four ballots were cast for representation by the Union, one ballot was cast against representation, and three ballots were challenged. Thus, the challenged ballots were sufficient in number to affect the results of the election. The challenge to one ballot was upheld by the Acting Regional Director, pursuant to agreement of all parties, and, therefore, the Acting Regional Director made no determination with respect to the other challenges. On September 26, 1980, the Board issued its Decision and Certification of Representative, certifying the Union as the exclusive representative of all the employees in the appropriate bargaining unit.

Within this factual background the General Counsel alleges that Respondent committed various violations of Section 8(a)(1) of the Act in order to persuade its employees to vote for decertification of the Union. Further the General Counsel alleges that, after the election, Respondent sought to retaliate against those employees who voted for the Union and to reward those employees who voted against representation by the Union. Further, the General Counsel alleges that Respondent discharged Horatio Wilmott, a mechanic, in violation of Section 8(a)(3), because of his support for the Union in the representation election. Finally, the complaint alleges that Respondent made certain changes in terms and conditions of employment of the unit employees, without prior notice to or bargaining with the Union. Respondent filed a timely answer denying the commission of any unfair labor practices but, as discussed above, Respondent did not present any evidence at the hearing.

#### B. *The 8(a)(1) Allegations*

As discussed above, the petition for the representation election was filed on April 7, 1980. Prior to the election of July 24, James Carter, Respondent's secretary-treasurer,[3] sought to persuade employees to vote against representation by the Union. Robert Craw, Jr., a mechanic, testified that he returned to Respondent's employ in April 1980, after a leave of absence of several months. According to Craw, he and Carter had numerous discussions in which they agreed that Respondent's dealership would be better off without the Union. Prior to Craw's return to Respondent's employ in April 1980, Carter said Respondent would "take care" of Craw because Craw was one of the few people whom Respondent could count on to vote against the Union. Craw attempted to convince employees to vote against representation by the Union. He frequently reported back to Respondent's management the sentiments of the mechanics regarding the election. Craw reported to Carter, Reed, Voulgaris, and Helzer that employees Dave Rogers, Bruce Hicks, and Horatio Wilmott intended to vote for the Union in the election and that employee Guy Hampe, in addition to Craw, intended to vote against the Union. With respect to employee Chris Clemens, initially Craw reported that Clemens would vote against the Union. However, 2 weeks prior to the election, Clemens changed his

[1] In February 1981, Respondent sold the dealership.

[2] The appropriate unit is:

All full-time and regular part-time journeymen auto mechanics and apprentices employed by Respondent at its San Rafael, California location; excluding all other employees, guards and supervisors as defined in the Act.

[3] I find that Carter, President B. G. Reed, Officer and Stockholder Ted Voulgaris, and Service Director Robert Helzer were supervisors of Respondent within the meaning of Sec. 2(11) of the Act.

mind and Craw, accordingly, updated his report to Respondent's management.

Prior to the election, Respondent's campaign against the Union centered around its argument that its proposed profit-sharing plan would be more beneficial to employees than the Union's pension plan. Craw spoke to employees and sought to convince them of the benefits of Respondent's proposed plan. Shortly before the election, Helzer, Carter, and Voulgaris held meetings with the employees in which they asked for support in the forthcoming election. The employees were told that if they voted for the Company they would receive a better benefit package than that received under a union contract. Profit sharing was mentioned; however, the employees were told that the details could not be given out before the election.

Mechanic Chris Clemens testified that, shortly before the election, Helzer told him that it did not matter which way the election went because Respondent had "lined up scab mechanics" in case the employees went on strike. Mechanic Dave Rogers also testified that he had a conversation with Helzer prior to the election concerning a possible strike. Helzer told Rogers that, if the employees voted for the Union, there would be a strike. Rogers said that, before there could be a strike, the employees would have to vote for a strike. Helzer answered that knowing management as he did, there definitely would be a strike. Helzer said that Respondent had six mechanics waiting in case of a strike. Rogers said that there were not six unemployed Alpha Romeo mechanics in California. Helzer answered that Respondent had advertised nationally and had lined up mechanics for a strike.

On the day of the election, after the ballots were counted, Carter became very upset at the results of the voting. Carter screamed at the employees that they were no good. He also screamed that the employees wanted the Union and were "going to be stuck with it." That same day, Helzer told Clemens that Clemens' scheduled trip to a school run by Alpha Romeo in Los Angeles was canceled because of "the way the vote had gone." Upon learning that Clemens' trip to the Alpha Romeo school had been canceled, Rogers went to talk to Helzer. Helzer told Rogers that Carter had told him (Helzer) that Respondent no longer wished to pay for Clemens' schooling. Carter approached Rogers and Helzer, and Rogers asked Carter why he was punishing Clemens. Carter said that he (Carter) knew who the loyal employees were and that he was not going to train disloyal employees. Carter then told Rogers of problems that he had with unions on the east coast. When Rogers appeared sympathetic, Carter asked Rogers to explain to the other employees how terrible the Union was and to attempt to have "this election annulled and to ask for another election or try and change the results." Later that evening, Carter called Clemens at home and told Clemens that Respondent would send Clemens to the school "but there would probably be another election."

The day after the election, Carter told employee Guy Hampe that Respondent appreciated Hampe's vote against the Union and that Hampe "would be treated well." Shortly after the election, Carter told Hampe and Craw that he was sorry that the Union had been voted in and that Respondent's plans for profit sharing had been ruined. Carter said that he appreciated Hampe's and Craw's loyalty. Carter later told Craw that anybody who had anything to do with the Union would be "out of luck." Carter said he intended to "force out" Wilmott, Rogers, Clemens, and Hicks. Carter also told Craw that he would never sign a contract with the Union, but would "burn down the place first."

Prior to the election, Respondent paid for health insurance coverage for its employees and their dependents. However, in September 1980, Respondent notified its employees that it would no longer pay for coverage for dependents. Employees were asked whether they wished to pay for coverage of dependents or cancel that coverage. Most of the employees refused to authorize any change. Thereafter, Respondent canceled coverage for dependents. During the same time period, Respondent decreased the amount of its insurance coverage for its employees' tools. The Union received no notice of these changes in insurance coverage until after the changes had been put into effect. Another change by Respondent, after the election, occurred in the institution of a comeback policy.

Prior to the election, Respondent had no policy regarding comebacks. Comebacks are automobiles upon which repairs have been made which come back to the shop for the work to be redone. After the election, Helzer announced that a record would be kept of the number of comebacks for each mechanic and that three comebacks by any mechanic would result in that mechanic's discharge. Prior to the election there had been no complaints about comebacks. It appears that the comeback policy was discriminatorily applied. Craw and Hampe, who voted against the Union, received no complaints about comebacks. Hicks, Rogers, and Wilmott, who voted for the Union, received complaints. The complaints against Rogers turned out to be invalid. Clemens, the fourth union voter, was off from work due to an injury at the time the policy was instituted.

### C. *The Discharge of Horatio Wilmott*

Wilmott has been employed as a mechanic for 27 years. He was working for Brown Motors when Respondent took over the operation in early 1980. Wilmott has been a member of the Union for many years and Respondent knew, through Craw, that Wilmott voted for the Union in the representation election.[4] Prior to the election, Respondent had made no complaints about Wilmott's work. However, after the election, Respondent's attitude toward Wilmott changed.

Shortly after the election, Helzer, at a meeting of mechanics, complained about too many comebacks. Helzer later met individually with each mechanic to discuss comebacks. Helzer told Wilmott that Wilmott had too many comebacks. Wiilmott answered that there had never been any complaints about his work and that Respondent had always been happy with his work. Helzer said that recently Wilmott had too many comebacks. At

[4] As stated earlier, Carter told Craw that Wilmott and the other prounion employees would be forced out.

the hearing, Wilmott testified that he had comeback problems with only one automobile.

In September 1980, Wilmott injured his back while working on an automobile at Respondent's shop and was off from work until December. Wilmott returned to work on December 5 and pursuant to usual practice was given light duty. Helzer told Wilmott that Respondent had too many mechanics and would have to "get rid of some of them." Helzer advised Wilmott to look for work elsewhere. Wilmott answered that because of his age he would have difficulty finding another job. The next day, Helzer assigned Wilmott to remove an engine and transmission, very heavy work. According to several witnesses, this was contrary to past practice; i.e., employees returning from injury or disability would usually be given light work. On that afternoon, Helzer told Wilmott that Respondent did not need the mechanic's services anymore. Helzer said that Respondent had too many mechanics and not enough work.[5] According to Wilmott, Respondent's mechanics worked overtime on that date.

I find that the General Counsel has established a *prima facie* case that Wilmott was discharged because of his support for the Union. Respondent learned from employee Craw that Wilmott voted for the Union in the representation election. Upon receiving the tally of ballots, Carter became angry and said he would force out the employees who supported the Union.[6] That very day, Carter withdrew from employee Clemens the scheduled trip to school for training. He also asked employee Rogers to attempt to get another election. Insurance benefits were reduced and a comeback policy announced. Within this background of unfair labor practices, Helzer first suggested that Wilmott look for work elsewhere. When that ploy did not work, Helzer assigned Wilmott heavy work, despite the employee's back injury and the usual practice of assigning injured employees light work. Finally, when Wilmott did not quit, Helzer fired him citing lack of work, although the other mechanics were working overtime.

Under the Board's decision in *Wright Line, a Division of Wright Line, Inc.*, 251 NLRB 1083 (1980),[7] the burden shifts to Respondent to demonstrate that the same action would have taken place even in the absence of the protected conduct. As stated earlier, Respondent put on no defense. Accordingly, I find that Respondent discharge Wilmott because of his support for the Union and thereby violated Section 8(a)(3) and (1) of the Act.

## CONCLUSIONS OF LAW

1. Respondent is an employer within the meaning of Section 2(2) of the Act, engaged in commerce and in a business affecting commerce within the meaning of Section 2(6) and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. Respondent violated Section 8(a)(3) and (1) of the Act by unlawfully discharging its employee Horatio Wilmott because of his support for the Union.

4. Respondent violated Section 8(a)(5) and (1) of the Act by unilaterally changing its health insurance and tool insurance coverages and instituting a comeback policy without prior notification to or bargaining with the Union.

5. Respondent violated Section 8(a)(1) of the Act by: promising employees increased benefits if they voted against the Union; creating the impression that its employees' union activities were under surveillance; encouraging employees to demand that the Board election be annulled; threatening to discharge employees who voted for the Union; promising benefits to employees who had voted against the Union; threatening employees with reduced benefits because of their union activities; and telling employees that it would never negotiate a contract with the Union.

6. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

## THE REMEDY

Having found that Respondent, Marin Grand Prix Motors Corporation, engaged in certain unfair labor practices, I shall recommend that it be ordered to cease and desist therefrom and that it take certain affirmative action to effectuate the policies of the Act.

Respondent shall be required to offer Horatio Wilmott reinstatement to his former job[8] or, if that job no longer exists, to an equivalent position of employment, without prejudice to his seniority or other rights and privileges, and to make him whole for any loss he may have suffered as a result of the discrimination against him in the manner set forth in *F. W. Woolworth Company*, 90 NLRB 289 (1950), with interest computed in the manner set forth in *Florida Steel Corporation*, 231 NLRB 651 (1977). See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).

As Respondent is no longer operating the dealership, and to insure that all employees affected by Respondent's action be apprised of the unlawful nature of these acts and assured that such acts will not be repeated, Respondent will be ordered to mail the notice to employees, required by this Order, to the homes of all auto mechanics and apprentices employed by Respondent during the period of July 1980 to February 1981.

[Recommended Order omitted from publication.]

[5] Wilmott had not yet completed the transmission job.

[6] At the time of Wilmott's discharge, Clemens was off from work with an injury and Rogers had left for another job.

[7] Enfd. as modified 662 F.2d 899 (1st Cir. 1981).

[8] As discussed above, Respondent is no longer operating the automobile dealership. I leave to the compliance stage of this proceeding the determination of the extent to which Respondent is able to comply with the usual remedial order.